FILE COPY

Office - Supreme Court, U. S.
FILED
AUG 23 1946
CHARLES ELMORE CROPLEY
CLERK

No. 317

Supreme Court of the United States

OCTOBER TERM, 1945

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

v.

FRANCIS E. TOWER,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	3
Reasons for granting the writ	10
Conclusion	19

CITATIONS

Cases:

Argo v. Commissioner, decided June 20, 1945	12
Burnet v. Leininger, 285 U. S. 136	15, 17
Burnet v. Wells, 289 U. S. 670	13, 14, 16
Campbell v. Commissioner, decided February 9, 1944	18
Commissioner v. Court Holding Co., 324 U. S. 331	13, 15
Commissioner v. Harmon, 323 U. S. 44	15
Corliss v. Bowers, 281 U. S. 376	13, 14
Dobson v. Commissioner, 320 U. S. 489, rehearing denied, 321 U. S. 231	15, 17
Doll v. Commissioner, 149 F. 2d 239	12, 13
Douglas v. Willcuts, 296 U. S. 1	13, 14, 15
Earp v. Jones, 131 F. 2d 292, certiorari denied, 318 U. S. 764	12
Grant v. Commissioner, decided July 19, 1945	10, 11
Gregory v. Helvering, 293 U. S. 465	13, 14
Griffiths v. Commissioner, 308 U. S. 355	13, 14
Gulf Oil Corp. v. Lewellyn, 248 U. S. 71	14
Harrison v. Schaffner, 312 U. S. 579	13, 15
Helvering v. Clifford, 309 U. S. 331	13, 14, 15, 16, 18
Helvering v. Eubank, 311 U. S. 122	15
Helvering v. Fuller, 310 U. S. 69	14, 16
Helvering v. Hallock, 309 U. S. 106	14
Helvering v. Stuart, 317 U. S. 154	13, 14, 16
Higgins v. Smith, 308 U. S. 473	13, 14
Harmel v. Helvering, 312 U. S. 552	14
Lorenz v. Commissioner, 3 T. C. 746, affirmed *per curiam*, 148 F. 2d 527	19
Lowry v. Commissioner, 3 T. C. 739	19
Lucas v. Earl, 281 U. S. 111	15
Lusthaus v. Commissioner, 149 F. 2d 232	10, 11

Cases—Continued. Page

Mead v. *Commissioner*, 131 F. 2d 323, certiorari denied, 318 U. S. 777 12

Rossmoore v. *Commissioner*, 76 F. 2d 520 17

Sligh, Jr. v. *Commissioner*, 3 T. C. 730 19

Southern Pacific Co. v. *Lowe*, 247 U. S. 330 14

Strong v. *Commissioner*, decided July 19, 1945 ..... 10, 11

Tinkoff v. *Commissioner*, 120 F. 2d 564 12

United States v. *Phellis*, 257 U. S. 156 ..... 13, 14

Waldburger v. *Helvering*, 1941 P-H B. T. A. Memorandum Decisions, par. 41, 438 affirmed *per curiam*, 131 F. 2d 398 12

Weiss v. *Stearn*, 265 U. S. 242 13

Statutes:

Internal Revenue Code:

Sec. 22 (26 U. S. C., Sec. 22) 2

Sec. 181 (26 U. S. C., Sec. 181) 3

Miscellaneous:

Paul, *Partnerships in Tax Avoidance*, 13 Geo. Wash. L. Rev. 121 (1945) 18

Treasury Regulations 103, Sec. 19.22 (a)-1 3

In the Supreme Court of the United States

OCTOBER TERM, 1945

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

FRANCIS E. TOWER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Acting Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered in this case.

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 15–28) are reported at 3 T. C. 396 and the opinion of the Circuit Court of Appeals (R. 82–87) at 148 F. 2d 388.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 2, 1945 (R. 81) and petition for rehearing was denied May 14, 1945 (R. 89). The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Circuit Court of Appeals erred in reversing the Tax Court's decision that there was not in substance a contribution of capital to the business by taxpayer's wife and no real partnership between them and that taxpayer earned the partnership profits credited to the wife's account during the years in question, with the result that he is taxable upon them under Section 22 (a) of the Revenue Act of 1938 and of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

Internal Revenue Code:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or

gains or profits and income derived from any source whatever. * * *

(26 U. S. C., Sec. 22.)

* * * * * *

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

(26 U. S. C., Sec. 181.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.22 (a)–1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.

STATEMENT

The facts as found by the Tax Court (R. 16–21) are as follows:

Since 1927 taxpayer has operated and managed the R. J. Tower Iron Works, located at Greenville, Michigan, engaged in the manufacture and sale of sawmill machinery and wood and metal stampings. On September 9, 1933, the business was incorporated under the name of "The R. J.

Tower Iron Works, Inc." The outstanding stock consisted of 500 shares of a par value of $100 per share, of which taxpayer received 425 shares, Harvey A. Amidon 50 shares, and H. J. Lawrance the remaining 25 shares. The by-laws required that the directors hold stock in the corporation and the three stockholders were the directors. Taxpayer was president of the corporation and Amidon secretary and treasurer. About six months after the corporation was organized, in the early part of 1934, taxpayer purchased Lawrance's 25 shares of stock and Lawrance severed his connection with the company. Taxpayer immediately made a gift of five shares of stock to his wife, who was made a director and vice-president of the corporation. Taxpayer then owned 445 shares, his wife five shares, and Amidon 50 shares. (R. 16.)

A tentative operating statement as of July 31, 1937, showed that the business of the corporation had been successful and that substantial profits had been realized in the year 1937. In July, 1937, after discussing the matter with his wife, taxpayer talked to Amidon with regard to the advisability of dissolving the corporation and setting up a partnership. Amidon, who had worked in the business for a long time, kept the books of the corporation under taxpayer's supervision. He had no objection to the formation of a partnership and believed the change would not create any great risk so far as he personally

was concerned. Consultations were held with taxpayer's attorney and accountant, who took care of taxpayer's tax matters. They were all of the opinion that the formation of a partnership would result in tax savings as well as eliminate the necessity of filing various corporate returns. It was decided that taxpayer should transfer stock of the corporation to his wife so that she would be able to contribute a substantial share of the partnership capital. (R. 16–17.)

On August 25, 1937, taxpayer transferred to his wife 190 shares of the corporate stock owned by him. The transfer was conditional upon the wife's placing the corporate assets which the shares represented into the new partnership. The transfer was recorded on the corporate books and a new stock certificate was issued and delivered to taxpayer's wife. Taxpayer paid a gift tax of $213.44 on the transfer. (R. 17.)

The corporation was completely liquidated on August 28, 1937, three days after taxpayer transferred the 190 shares of stock to his wife, and was dissolved on August 30, 1937. On August 28, 1937, the day the corporation was liquidated, taxpayer, his wife, and Amidon executed a limited partnership agreement and all of the assets and liabilities of the corporation were transferred to the partnership. (R. 17.)

The partnership agreement provided that the business was to be carried on for a period of 20 years unless sooner terminated by a decision of

the majority in interest in the partnership capital; that taxpayer and Amidon would be general partners and taxpayer's wife a limited partner; that taxpayer's contribution to the partnership capital was $81,600, his wife's $62,400, and Amidon's $16,000; that the partners would share profits and losses in proportion to their respective contributions to capital, except that taxpayer's wife was not liable for losses in excess of her capital contribution; that the general partners were to have the exclusive voice in the management and control of the business and were authorized to determine the salaries of the general partners; that if the majority of general partners [taxpayer and Amidon] were unable to agree, a majority of the general partners in capital interest [taxpayer] would control; and that the net profits for each year would be distributed at such times and in such manner as the general partners [taxpayer and Amidon] might determine. A certificate of limited partnership was filed with the clerk of the county court and notice of the liquidation of the corporation and formation of a partnership was given to those banks with which the corporation had transacted business. (R. 17–18.)

Under the partnership agreement taxpayer's share of the partnership profits and losses amounted to 51%, his wife's share to 39% and Amidon's share to 10%. Amidon had formerly been employed by the corporation as a bookkeeper

and he continued to perform similar work for the partnership. In the early part of 1938 Amidon's responsibilities and duties increased as a result of an increase in the volume of business. Accordingly, his share of the profits was increased from 10% to 25% on September 1, 1938. Thereafter taxpayer received 42½% of the profits and his wife 32½%. The change in the distribution of profits was orally agreed upon and the original agreement and partnership certificate on file with the county clerk were not formally amended. It was also orally agreed that taxpayer and Amidon would not withdraw any future salary for their services. The original capital contributions of the partners remained the same. (R. 18–19.)

Although taxpayer's wife was vice-president and a director of the corporation after the withdrawal of Lawrance and before the formation of the partnership, she did not render any independent services to the corporation, was not actively interested or engaged in the business, and received no salary. In matters pertaining to the business she relied upon taxpayer's judgment. After the formation of the partnership taxpayer's wife rendered no services to the partnership and received no salary. (R. 20.) Taxpayer performed the same services for the partnership as he had previously performed for the corporation. He received no salary after Amidon's share of the profits was increased. The partnership car-

ried on the same business formerly carried on by the corporation and had the same customers. (R. 21.)

Partnership accounts were maintained on an accrual basis for the fiscal year ending August 31. Capital accounts were opened on the books of the partnership showing the amounts contributed by each partner. Distributive shares of the profits were credited either to the capital account or to the drawing account of each individual partner and the respective withdrawals of each partner were charged to their drawing accounts. For the fiscal year ending August 31, 1939, taxpayer's distributive share was $8,710.74, his wife's share $6,661.16 and Amidon's $5,123.97. For the fiscal year ending August 31, 1940, taxpayer's share was $18,253.51, his wife's $13,958.57 and Amidon's $10,737.36. Taxpayer's wife withdrew $2,032.80 for the year ending August 31, 1939, and $5,000 for the year ending August 31, 1940. (R. 19–20.) Some of the money she placed in her own savings and checking accounts and some she placed in a box at home in a safe to which both she and taxpayer had the combination. Since the bank holiday in 1933 taxpayer has kept all of his money and papers in this safe, although he used a separate box. (R. 20.)

Prior to the partnership agreement, taxpayer gave his wife a regular allowance of approximately $75 a week for household expenses. After the formation of the partnership and throughout

the taxable years taxpayer continued to give his wife an allowance of $75 a week for household expenses and for her support, although she paid for some of her own clothes. Taxpayer also paid the expenses of a daughter in college. During the year 1940 taxpayer and his wife built and furnished a cottage at Baldwin Lake, taxpayer contributing approximately $2,000 and his wife contributing $3,000. During that year taxpayer's wife also repaid taxpayer the sum of $1,403.88, which represented expenditures made by taxpayer for his wife's income tax and certain other expenses. They bought a $100 war bond each month and each contributed one-half of the purchase price. (R. 20–21.)

On the basis of these facts, the Tax Court concluded that since taxpayer's gift of stock to his wife was conditional it did not confer full dominion and control over the shares and was not a valid gift *in praesenti*; that the wife therefore made no capital contribution to the partnership; that there was no real partnership between taxpayer and his wife for the conduct of a business enterprise; and that the partnership profits credited to the wife's account during the years ending July 31, 1940, and July 31, 1941, are taxable to taxpayer. (R. 21–28.) The Circuit Court of Appeals reversed, holding that the profits credited to the wife's account are taxable to her rather than to her husband because the gift from husband to wife became complete upon formation

of the partnership if not before, giving the wife an interest in the partnership, and that, since there was no showing that the wife's share of the partnership income was under taxpayer's control, the partnership was bona fide and not unreal or a mere sham. (R. 82–87.)

REASONS FOR GRANTING THE WRIT

I

The decision of the court below is in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Lusthaus* v. *Commissioner*, 149 F. 2d 232, application for certiorari pending, and with the decisions of the Circuit Court of Appeals for the Tenth Circuit in the companion cases of *Grant* v. *Commissioner* and *Strong* v. *Commissioner*, decided July 19, 1945 (1945 P-H, par. 72,626). The court below held that a partnership between the petitioner and his wife was required to be recognized for tax purposes for the reason that legal title to shares of stock, given conditionally by taxpayer to his wife, or at least to the assets which they represented and which were afterward contributed in her name to the partnership, vested in her and there was an actual distribution of partnership earnings to her, the petitioner not having treated her share of the partnership earnings as his own.

In the *Lusthaus* case, as here, the husband made a gift to his wife to enable her to make a capital

contribution to the partnership into which his business was transformed, and after the formation of the partnership the wife was credited with her share of the profits and withdrew some of them. The Circuit Court of Appeals for the Third Circuit assumed that the arrangement complied with the formalities of Pennsylvania law but held that substance rather than form controls, that the partnership status must be genuine with a change in economic interests, and that the Tax Court was free to conclude that the conduct of the parties with reference to the business did not change, that the taxpayer did not divest himself irrevocably of the subject matter of the gift, and that the wife made no real contribution to the capital of the partnership.

The situation in the *Grant* and *Strong* cases was similar except that there the members of an existing partnership transferred to their wives an interest in its assets and organized a new partnership with the wives as partners. The decision of the Circuit Court of Appeals affirming the Tax Court's decision is based on the same principles as those followed in the *Lusthaus* case. Not only did the court below apply criteria rejected by the Circuit Courts of Appeals for the Third and Tenth Circuits as controlling but its employment of different criteria induced a review of the Tax Court's decision extending beyond the scope of judicial review deemed appropriate by those courts. The holding in the other cases is (1) as

to substance, that the issue in cases of this character is whether the wife actually made a contribution of capital and whether the family partnership arrangement produced a genuine change in the husband's economic position instead of constituting simply an attempted allocation of business income, and (2) as to procedure, that the Tax Court's conclusion upon these matters is controlling if it has a rational basis in the evidence.

The decision is also inconsistent with *Earp* v. *Jones*, 131 F. 2d 292 (C. C. A. 10th), certiorari denied, 318 U. S. 764, and *Mead* v. *Commissioner*, 131 F. 2d 323 (C. C. A. 5th), certiorari denied, 318 U. S. 777 (see also *Argo* v. *Commissioner*, (C. C. A. 5th), decided June 20, 1945-(1945) P-H, par. 72, 588)), in each of which the wife contributed to a partnership with her husband capital which was given to her by the husband. Although in these cases and some others, the failure of the wife to actually withdraw profits from the business for her unrestricted use was one factor indicating a lack of substance to the partnership arrangement, no court has previously stressed this factor as controlling, as did the court below.[1]

[1] See also *Waldburger* v. *Helvering*, 131 F. 2d 598 (C. C. A. 2d), affirming *per curiam* the decision of the Board of Tax Appeals (1941 P-H B. T. A. Memorandum Decisions, par. 41,438); *Tinkoff* v. *Commissioner*, 120 F. 2d 564 (C. C. A. 7th); and *Doll* v. *Commissioner*, 149 F. 2d 239 (C. C. A. 8th), application for certiorari pending. These cases involve purported family partnerships unaccompanied by alleged gifts of business property from the husband to the wife; the wife, or wife and children, have simply been declared in some form to be partners. Such cases present a less difficult situation

II

The decision of the court below conflicts in principle with decisions of this Court on related issues. In respect to income from capital, which is taxable to the person who owns the income-producing property, it is axiomatic that ownership for tax purposes is not circumscribed by refinements of legal title. This Court has repeatedly held that taxation is an intensely practical matter concerned with economic realities and that command over property or enjoyment of its economic benefits mark the real owner for income tax purposes. *Helvering* v. *Clifford*, 309 U. S. 331; *Helvering* v. *Stuart*, 317 U. S. 154; *Harrison* v. *Schaffner*, 312 U. S. 579; *Douglas* v. *Willcuts*, 296 U. S. 1; *Corliss* v. *Bowers*, 281 U. S. 376; *Burnet* v. *Wells*, 289 U. S. 670. Similarly, tax consequences flow from the substance of a transaction rather than from its form. *Commissioner* v. *Court Holding Co.*, 324 U. S. 331; *Higgins* v. *Smith*, 308 U. S. 473; *Griffiths* v. *Commissioner*, 308 U. S. 355; *Gregory* v. *Helvering*, 293 U. S. 465; *Weiss* v. *Stearn*, 265 U. S. 242; *United*

---

than those which do involve attempted gifts of capital, and no conflict of decisions or failure of a Circuit Court of Appeals to accept Tax Court findings exists with regard to them. The *Doll* case, therefore, does not involve the complex questions which are present in the instant one. The Commissioner, who filed a brief in opposition to certiorari in that case, has filed an additional memorandum setting forth the relationship between the two cases, suggesting that the Court may wish to grant certiorari in that case so that all phases of the family partnership as a tax avoidance scheme may be considered.

States v. *Phellis*, 257 U. S. 156; *Gulf Oil Corp.* v. *Lewellyn*, 248 U. S. 71; *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330. In applying these principles, as the Court has held, the independent existence of a legally created trust may be disregarded (*Helvering* v. *Clifford*, *supra*; *Hormel* v. *Helvering*, 312 U. S. 552; *Helvering* v. *Stuart*, *supra*; *Corliss* v. *Bowers*, *supra*; *Douglas* v. *Willcuts*, *supra*; *Burnet* v. *Wells*, *supra*), as may the independent existence of a legally created corporation which is unreal or a sham, serving no business purpose (*Gregory* v. *Helvering*, *supra*; *Griffiths* v. *Commissioner*, *supra*; *Higgins* v. *Smith*, *supra*). The opinion of the Court in *Helvering* v. *Clifford*, *supra*, furthermore established the principle that a legally perfect gift of income-producing property will not relieve the donor of the tax on the income therefrom in a case where the transfer is an intra-family arrangement which leaves the transferor with incidents of control sufficient to support the conclusion that his economic position has not changed and that he is in substance the true owner. See also *Hormel* v. *Helvering*, *supra*; *Helvering* v. *Stuart*, *supra*; *Helvering* v. *Fuller*, 310 U. S. 69, 76. As a corollary to this doctrine, it is a cardinal rule, established by decisions of this Court, that he who earns or is vested with the right to receive income may not escape taxation upon it by any kind of anticipatory arrangement whereby he procures payment to another. *Helvering* v. *Horst*,

311 U. S. 112; *Helvering* v. *Eubank*, 311 U. S. 122; *Harrison* v. *Schaffner, supra; Douglas* v. *Willcuts, supra; Burnet* v *Leininger*, 285 U. S. 136; *Lucas* v. *Earl*, 281 U. S. 111; *Commissioner* v. *Harmon*, 323 U. S. 44. In determining whether a transaction is in substance an anticipatory assignment of income or a transfer of economic ownership of that which produces the income, the Tax Court is entitled to view the separate steps in a transaction as a whole (*Commissioner* v. *Court Holding Co., supra; Dobson* v. *Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231); and its conclusion as to the substance of the transaction is conclusive if supported by evidence (*Commissioner* v. *Court Holding Co., supra; Helvering* v. *Clifford, supra*).

In contrast to the postulates of these decisions, the reasoning of the court below rejects as irrelevant the Tax Court's findings that taxpayer's wife made no capital contribution to the partnership and admittedly performed no services, that no real partnership existed between taxpayer and his wife for the conduct of a business enterprise, and that taxpayer earned the income credited to his wife's account. Instead of accepting the conclusion to which these findings almost inevitably lead, the court below held in effect that a formal transfer to the wife of legal title to a part of the husband's interest in a partnership is effective for tax purposes to split the partnership income between them provided only that there be a distribu-

tion of earnings to the wife and that the record does not demonstrate that the husband treated as his own the wife's share of the partnership profits. (See R. 87.)

On what appears to be its turning point that the question whether the partnership should be recognized for tax purposes depends upon the showing made with respect to control by the husband over his wife's share of the partnership income—the decision below is in further conflict of principle with cases decided by this Court. A conclusion as to whether the partnership should be given effect taxwise is a conclusion as to the substance of the partnership arrangement, and substance is in turn dependent upon economic realties. Economic gain to, or economic ownership of the property by, taxpayer does not depend solely upon control over the distribution of the income attributed to the wife. Decisions of the Court with respect to trusts make it clear that control over the property producing the income may be sufficient (*Helvering* v. *Clifford, supra*), and further that economic gain may be realized where, as here, taxpayer had such control over his wife's partnership interest as to enable him to benefit his own partnership interest. See *Helvering* v. *Stuart, supra*; *Burnet* v. *Wells, supra*; *Helvering* v. *Fuller, supra*, p. 76, and footnote, p. 72. Nor is it necessarily without significance that taxpayer derived economic satisfaction from his wife's use of her share of the partnership profits

for purposes, such as acquisition of a summer cottage, for which taxpayer would ordinarily have furnished the funds.

The decision below, contrary to the principle laid down by this Court in *Dobson* v. *Commissioner, supra,* fails to give effect to findings of the Tax Court which make it clear that taxpayer controlled the distribution of partnership income to his wife. It is clear that taxpayer could determine the time for and manner of distribution of partnership profits, for, as the Tax Court found, under the partnership agreement taxpayer and Amidon were authorized to make these determinations and taxpayer's decision controlled if they failed to agree, since he was the majority of the general partners in capital interest. (R. 18.) Other findings of the Tax Court reflecting taxpayer's complete control of the business make it apparent that the production of partnership income depended upon his will. In a real sense, therefore, the partnership earnings were subject to his disposition. Cf. *Burnet* v. *Leininger, supra,* especially as interpreted by Judge Learned Hand in *Rossmoore* v. *Commissioner,* 76 F. 2d 520 (C. C. A. 2d).

Finally, the facts regarding taxpayer's gift to his wife to enable her to make a capital contribution to the partnership make it evident that the alleged contribution was in substance his and that, accordingly, he was the one who, through

capital and services, earned the income attributed to his wife. This is the only logical conclusion possible if the decisions of this Court that substance and not form controls (*supra*, pp. 13–15) are to be given effect. On no valid ground could the Tax Court's conclusion properly be overturned.

III

The question presented in this case is an important one in the administration of the tax laws and should be settled by this Court. The family partnership device for tax avoidance has apparently been resorted to increasingly since this Court's decision in *Helvering* v. *Clifford*, *supra*, foreclosed the use of trusts as a means of tax avoidance. The result is a substantial growth in the number of family partnership cases.[2] We are advised that 221 such cases are now pending before the Tax Court, involving $4,719,000 in taxes.[3] While the facts of these cases vary, it is important that a basis for their decision be established by this Court, both for the future guidance of the Commissioner in his determination of deficiencies and as a means of securing their sound disposition by the courts. In the districts in which appeal, if taken, would be to the court below, where the judges are in dis-

[2] See Paul, *Partnerships in Tax Avoidance*, 13 Geo. Wash. L. Rev. 121 (1945).

[3] There are also eleven cases involving $205,000 pending in the district courts.

agreement as to the proper basis of decision,[4] there are 48 family partnership cases now pending.[5] Even now, two such cases (*Lowry* v. *Commissioner* and *Sligh, Jr.* v. *Commissioner*, 3 T. C. 730; *Camfield* v. *Commissioner*, decided February 9, 1944 (1944 P-H T. C. Memorandum Decisions, par. 44,039)) are awaiting decision by the court below. A decision by this Court in the instant case will serve as a basis for resolving pending, as well as future, cases and alleviate the administrative and judicial burdens which the widespread creation of family partnerships is causing.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be granted.

HAROLD JUDSON,
Acting Solicitor General.

AUGUST, 1945.

---

[4] See the dissent of Judge Martin (R. 87–88) and cf. *Lorenz* v. *Commissioner*, 3 T. C. 746, affirmed *per curiam*, 148 F. 2d 527 (C. C. A. 6th).

[5] Of the cases now pending in the Tax Court, 48, involving deficiencies approximately of $961,000 would come within the jurisdiction of the Circuit Court of Appeals for the Sixth Circuit on appeal.

U. S. GOVERNMENT PRINTING OFFICE 1945